

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:19CR559
)	
Plaintiff,)	JUDGE SARA E. LIOI
)	
v.)	<u>JOINT PROPOSED PRELIMINARY</u>
)	<u>STATEMENT</u>
DEEPAK RAHEJA, <i>et al.</i> ,)	
)	
Defendants.)	

PRELIMINARY STATEMENT

Defendant Deepak Raheja is a physician who practiced psychiatry and neurology in Cleveland, Ohio since 1993. Defendant Bhupinder Sawhny is a physician who practiced neurosurgery in Parma, Ohio since 1982. From November 2010 through July 2014, Defendant Frank Mazzucco was employed as a Neuroscience Area Manager by Avanir Pharmaceuticals, Inc. (“Avanir”). In late July of 2014, Mr. Mazzucco’s promotion to Regional Business Manager was announced. Beginning in October 2014 through September 2016, Mr. Mazzucco was a Regional Business Manager for Avanir and supervised a geographic region that included Dr. Raheja and Dr. Sawhny’s practices. As Regional Business Manager, Mr. Mazzucco also supervised Gregory Hayslette, an Avanir pharmaceutical sales representative. Mr. Hayslette was the primary Avanir pharmaceutical sales representative for the Northeast Ohio region during the relevant time period.

Avanir is a pharmaceutical company that manufactured the drug Nuedexta, which was approved by the Food and Drug Administration for the treatment of Pseudobulbar Affect (“PBA”). PBA is a condition that generally occurs secondary to a variety of underlying neurologic conditions and is characterized by involuntary, sudden, and frequent episodes of

laughing and/or crying. PBA episodes typically occur out of proportion or incongruent to the underlying emotional state. Avanir marketed Nuedexta through a variety of means including nationwide advertisements, the use of pharmaceutical sales representatives, and a speaker's bureau program, through which Avanir sales representatives engaged doctors to speak about and promote Nuedexta to other medical professionals.

Count 1 of the Indictment charges all three defendants with conspiring to solicit and receive, and offer and pay, kickbacks in connection with a federal health care benefit program. The government alleges that Mr. Mazzucco offered and provided to, and the physician defendants accepted, things of value to induce them to write prescriptions for Nuedexta. Counts 2 through 41 charge the defendants individually with the substantive offer or receipt of kickbacks:

- Counts 2 through 11 charge Dr. Raheja with receiving kickbacks in the form of payments and honoraria for participating in Avanir speaker's bureau programs;
- Counts 12 through 21 charge Dr. Sawhny with receiving kickbacks, namely dinners that he received while attending Avanir speaker's bureau programs;
- Counts 22 through 31 charge Mr. Mazzucco with facilitating payment to Dr. Raheja for the Avanir speaker's bureau programs; and
- Counts 32 through 41 charge Mr. Mazzucco with facilitating payment of Dr. Sawhny's dinners at the Avanir speaker's bureau programs.

Count 42 charges all defendants with conspiring to defraud and to obtain money from Medicare and Medicaid by means of false and fraudulent pretenses, representations, and promises. The government alleges that the defendants caused pharmacies to submit fraudulent claims to Medicare and Medicaid for Nuedexta prescriptions that did not meet the requirements

for reimbursement. Counts 43 through 52 charge Dr. Raheja with substantive counts of health care fraud for knowingly and willfully causing the submission of fraudulent Nuedexta claims to insurance companies. Counts 53 through 55 charge Dr. Raheja with additional substantive counts of health care fraud for knowingly and willfully submitting claims to Medicaid for needle EMG tests billed as administered to undercover law enforcement agents but are alleged not to have been provided. And Counts 56 through 58 charge Dr. Sawhny with substantive counts of health care fraud for knowingly and willfully causing the submission of fraudulent Nuedexta claims to insurance companies.

Counts 59 through 68, applicable to Dr. Raheja, and Counts 69 through 74, applicable to Dr. Sawhny, allege that the physicians knowingly and willfully made and used false records in their medical files and in documentation submitted to insurance companies about patients' diagnoses or symptoms in connection with the delivery of or payment for health care benefits, items, or services. Count 75 charges Dr. Sawhny with aiding and abetting the wrongful disclosure of individually identifiable health information by giving Mr. Hayslette access to patient files without authorization.

Count 77 charges all three defendants with conspiring to commit honest services mail and wire fraud. The government alleges that the defendants' offer and acceptance of kickbacks compromised the physicians' fiduciary duty to their patients.

Dr. Raheja, Mr. Mazzucco and Dr. Sawhny have separately entered pleas of "Not Guilty" to each and every charge made against them, and they are presumed innocent of all the charges.

Dated: 10/3/22

Respectfully submitted,

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